

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JAMES W. GILLIAM, et al., :
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Plaintiffs, :
: 22-CV-7513 (JMF)
-v- :
:
DISCOVER BANK, et al., :
:
Defendants. :
:
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JESSE M. FURMAN, United States District Judge:

On February 2, 2023, Plaintiffs James W. Gilliam and Laura A. Gilliam filed a “Notice of Voluntary Dismissal Pursuant to F.R.C.P 41(a)(1)(A)(i).” *See* ECF No. 43. Because Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure states that a plaintiff may only dismiss an action without a court order by filing either “(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared,” neither of which is applicable here, this Court issued an Order directing Defendants to “file letters indicating whether they have any objections to the request.” *See* ECF No. 50. Defendant Kirschenbaum & Phillips, P.C. objected to dismissal without prejudice, *see* ECF No. 51, stating that “if Mr. Gilliam is allowed to dismiss without prejudice, he will pick yet another forum and commence yet another frivolous lawsuit.” *Id.*

On February 6, 2023, Plaintiffs filed a response, and on February 7, 2023, Plaintiffs filed an addendum to the response. *See* ECF No. 52-53. In the response, Plaintiffs state that Ms. Gilliam “has no memory of any part of the case and when James mentions it she has no idea of what he is talking about.” *See* ECF No. 52. In light of these facts, and the history of this case,

there is serious doubt whether this lawsuit was properly filed on Ms. Gilliam's behalf in the first instance. Accordingly, the Court concludes that it would be unjust and improper to dismiss the case as to her with prejudice and, thus, dismisses her claims *without* prejudice.

By contrast, in light of Defendant Kirschenbaum & Phillips, P.C.'s objection, and the bases for that objection, the Court will not dismiss Mr. Gilliam's claims unless such dismissal is *with* prejudice. If Mr. Gilliam objects to dismissal on those terms, he shall file a letter to that effect by **February 15, 2023** — in which case the litigation will proceed through either settlement or a final judgment. If Mr. Gilliam does not file a letter by that deadline (or indicates in a letter that he consents to dismissal with prejudice), the Court will dismiss his claims with prejudice without further notice. In light of the foregoing, **the telephone conference scheduled for February 13, 2023, at 4:00 p.m. is adjourned *sine die*.**

The Clerk of Court is directed to mail a copy of this order to Laura A. Gilliam and to terminate her as a party in the case.

SO ORDERED.

Dated: February 8, 2023
New York, New York



JESSE M. FURMAN
United States District Judge